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MAR 13 1944
CHAS. H. WATSON
IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943

No. 786

EDWARD M. WINSTON,

Petitioner,

VS.

THOMAS J. COURTNEY, State's At-
torney, COUNTY OF COOK, a Mun-
icipal Corporation of the State of
Illinois, and others,

Respondents.

Petition for Writ of Cer-
tiorari to the Supreme
Court of the State of
Illinois.

There heard on appeal from
the Circuit Court of Cook
County.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

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Of Counsel.



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PETITION FOR WRIT OF CERTIORARI.

*To the Honorable Chief Justice and the Associate Justices
of the Supreme Court of the United States:*

Your petitioner, EDWARD M. WINSTON, prays that Writ of Certiorari be issued by this Court to review the judgment below of the Supreme Court of Illinois, finally rendered November 11, 1943, affirming a judgment against your petitioner entered by the Circuit Court of Cook County in Illinois, dismissing his answer and counterclaim.

The judgment of both courts held as invalid and as of no avail a formal record contract for legal services, between your petitioner, an attorney at law, and the County of Cook, State of Illinois. Both courts thereby denied all rights of your petitioner under the said contract and held adversely to your petitioner upon certain Federal questions, based on the Constitution of the United States and hereinafter more fully set forth.

Judgment and Opinion Below.

The opinion of the Supreme Court of Illinois was first filed September 23, 1943. A Petition for Rehearing on the part of your petitioner was duly filed, but was denied by the court November 11, 1943. Another, and separate, Petition for Rehearing was duly filed by certain other defendants below (individual members of Cook County Board of Commissioners), but this Petition was "stricken," November 10, 1943, without any reason being given therefor. See detail of record at page 18ff below.

Jurisdiction in this Court.

This Petition is presented in accordance with Section 237 (as amended) of the Judicial Code (U. S. C. A., Title 28, section 344) and Rule 38 of this Court.

As already indicated, the judgment and opinion of the Supreme Court of Illinois construed certain statutes of the State of Illinois in such a way (your petitioner contends) and reversed its own ruling so as to—

- (a) Deprive your petitioner of his vested property rights without due process of law;
- (b) Deny your petitioner the equal protection of the laws of Illinois; and
- (c) Impair the obligation of your petitioner's contract with the County of Cook, State of Illinois.

And in all three of those particulars your petitioner contends that the judgment and opinion below contravened the Constitution of the United States.

The record shows that each of the Federal questions above mentioned was raised in the courts below and decided adversely to your petitioner.

Upon application to this Court the time to file this Petition for Certiorari was duly extended to March 13, 1944.

Summary Statement of Facts and Issues.

In order properly to understand this case, this Court must be rather fully advised as to the unusual background of facts out of which the case arose.

The County of Cook is the largest single county and local tax-collecting unit in the United States, since it includes not only the City of Chicago, but also a considerable area outside that city, and has a population of over 4 million people. In the years 1931 and 1932, the County (for the reasons hereinafter set forth) had actually become insolvent and was unable for many months to pay the court judges and other officials, and was unable to pay its current debts, and even defaulted on the interest on its municipal bonds. This condition had been brought about by three grave emergencies:

1. The County of Cook and the City of Chicago (like other local governments in the United States) during those years was suffering in their tax revenues from the effects of the great financial depression of that period; and as a result the County (which is the constitutional tax collecting agency for the State and all other local governments within the County, including the City of Chicago) was confronted with a cumulating amount of tax delinquencies both as to real

and personal property. These gross delinquencies by the end of the year 1930 had reached it was said more than 100 million dollars and had brought the threat of governmental disaster to the County.

2. The Legislature of the State and the State Tax Commission had previously ordered a so-called "Re-assessment" of all real estate tax valuations in the County of Cook for the year 1927; and this "Re-assessment" had itself greatly increased the temporary insolvency of the County (and all local government units within the County, including the City of Chicago), for the reason that the "Re-assessment" had taken more than 18 months longer to complete, than was contemplated or expected by the taxing authorities of the State and County; as a result of which no real estate taxes whatever were collected in the County during the period that such "Re-assessment" was being spread.

3. After this and during the years 1929 to 1932, it was (and is) a matter of common knowledge in Cook County that a so-called "tax strike" existed in the County whereby a large part of the real estate taxpayers completely refused to pay any taxes whatever until forced to do so by suits instituted for collection thereof, and the liquidation process of courts.

The record shows that as a result of these extraordinary tax conditions, the County and all of the local governments within the County (including the City of Chicago) were faced with bankruptcy; that the interest on their municipal bonds had been defaulted with the result that all of such bonds were badly depreciated on the financial markets, and the fiscal credit of the County and of each of such local governments was, for the time being, totally destroyed; while the thousands of municipal employees of the County and the other local governments were unpaid for months on end, and were for long periods of time continuously faced with what came to be known as "payless pay-days."

The record shows that the County Board of Cook County, under a special provision of the Illinois Constitution, is charged with the duty of "managing the affairs" of Cook County (Const. Art. 10, Sec. 7); and that the Statutes of Illinois make it the sole duty of the said County Board to enforce the collection of all property taxes, both real and personal, by suits in court if necessary.

The record shows that the County Board, being confronted with the severe tax emergency already indicated, decided to correct that situation as rapidly as possible and for that purpose, as already indicated, entered into a formal contract of record with your petitioner for the collection of such delinquent real estate taxes. That contract was fully considered and long debated by the County Board and was finally authorized and adopted by formal legislative action of the County Board, which incorporated the Contract therein.

In view of its prime importance in this case, this sovereign legislative action of the County (including the Contract in question) is set forth (Tr. 3 ff.) as part of State's Attorney's complaint in the trial court.

The record shows that at the time of such legislative action by the County and the making of that Contract, in the year 1931, the general legal adviser of the County of Cook was the then duly elected and acting State's Attorney of the County, the Honorable John A. Swanson (Tr. 8).

The record shows that for a period of more than 60 years prior thereto, and ever since the adoption of the Illinois Constitution of 1870, *down to the inception of this suit, in July, 1933*, it had been the custom and practice and tradition for the County Board of Cook County to secure the aid and assistance of outside counsel and at-

torneys in the collection of taxes (in addition to the State's Attorney) whenever the County Board determined that such action was in the public interest. That custom and practice had been specifically approved by at least four prior decisions of the Supreme Court of Illinois.

Acting under such custom and practice and tradition, the County Board made the Contract in question and the then State's Attorney of Cook County formally approved the legislative action of the County Board in authorizing the said Contract, and officially approved the Contract so made between the County and your petitioner (Tr. 8).

Your petitioner accepted the said Contract and proceeded to set up a large clerical and auditing force to carry out its provisions. In due course of contract period, petitioner instituted in court and pursued more than 818 separate and important real estate tax suits in the courts of the County and actually collected by force of those suits and paid over to the County treasury a total sum of delinquent taxes amounting to \$16,522,470.81.

Your petitioner particularly calls attention to the fact that the County of Cook, under the law, received (as compensation for its services and efforts of tax collection) all the so-called "penalties" collected from taxpayers, being additional sums due after default, which these suits conducted by Winston collected, over and above the taxes originally assessed. And your Petitioner also calls particular attention to the fact that his fees and compensation, under his contract, were not to be paid out of the general funds of the County, but depended entirely on and were to be paid out of such "penalties" as might be collected by him. In other words, the County itself was to make, and did make, a large profit out of the services of your peti-

tioner; and your petitioner's fees were to be paid as a relatively small part of such profit to the County.

Section 705, Chapter 120, Ill. Rev. Stats.

The record in this case shows that the books and records of the County Treasurer showed (and still show) that your petitioner actually collected the sum of \$3,546,-443.70 as "penalties" on delinquent taxes, all of which sum went into the County treasury *as profit* to the County, as a result of the contract with your petitioner.

New State's Attorney.

The record shows that in November, 1932, and about 18 months after your petitioner began work under the said contract, a new and different State's Attorney was elected in Cook County, and that he was of a different political party from his predecessor. And your petitioner charges that the record in this case shows that this case has grown entirely out of that change in the personnel of the office of State's Attorney of Cook County. The same State's Attorney who was elected in November, 1932, is still in office at the time of the filing of this Petition for Certiorari. That State's Attorney, in his own behalf and *in his own name*, began this suit in July, 1933, to have your petitioner's contract with the County declared void and of no avail and to restrain and prevent any payments whatever being made to petitioner under such contract.

All services by petitioner were performed and completed before this suit was filed.

The case has dragged through the courts for more than 10 years, and was only finally decided against your petitioner by the judgment of the Supreme Court of Illinois in the late fall of 1943, as already indicated.

During said domination by the new State's Attorney the delinquences have grown and now "there are hundreds of millions of dollars of delinquent taxes against property in Cook County." *People v. Courtney*, 380 Ill. 171 at 180.

Your petitioner urges that the Supreme Court of Illinois has denied to your petitioner his constitutional rights, as stated elsewhere in this petition. And your petitioner contends that the Supreme Court of Illinois has decided this case adversely and contrary to several of the prior and settled decisions of that court itself (as already stated) upon which earlier decisions your petitioner properly relied and the County Board properly relied, in entering into the said contract; and that thereby your petitioner became vested with certain contract rights and property rights in and to the said contract and its avails. And your petitioner therefore says that the Supreme Court of Illinois has illegally and arbitrarily changed its own well-settled construction of the Constitution of Illinois, and of applicable Statutes of Illinois in the premises; and that the said Court has illegally and arbitrarily applied its new ruling in an *ex post facto* and lawless fashion in an attempt by the Court to destroy the vested rights of your petitioner.

Federal Questions.

The major Federal questions in this case are:

A. Whether a written contract made by a County upon its public records in good faith, by authority of specific State and County legislation, between a practicing attorney and the County, providing for fees and reimbursement to the attorney for legal services and expenses paid out by him in rendering legal services in the courts for the collection of taxes on real estate, is valid and enforceable, and is protected from impairment by the Constitution of the United States.

B. Whether destruction by a State Court of such a contract is not forbidden by those provisions of the

Constitution of the United States which prohibit impairment of contracts; which prohibit *ex post facto* laws and decisions of States; which prohibit the taking of vested and established contract rights or other private property; which prohibit the taking of private property for public use, and which prohibit a State from denying to the citizen the equal protection of the law, on any grounds whatever.

The foregoing Federal questions are of such general public importance, and are particularly of such grave personal importance to your petitioner, that they should be reviewed by this Court. Particularly is that so because the said rulings made by the courts of Illinois on this record seem to be in clear conflict with decisions and rulings previously made by this Court.

Winston has not claimed and does not claim to supersede any power of the State's Attorney of Cook County. His services were rendered pursuant to legislation by the County Board and pursuant to request by John A. Swanson, State's Attorney, and pursuant to contract made of public record with the County Board. Winston agrees that the County Board had authority to terminate his services by new legislation by the County Board, which was done by proceedings dated January 16, 1933.

Prayer for Relief.

Your petitioner submits that he did not receive *due process* of law nor *equal protection* of the law, in the Courts of Illinois in this case. The action of Circuit Court and Supreme Court of Illinois was such as to call for review and reversal by the Supreme Court of the United States.